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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,986	09/30/2003	Jon Arthur Fairhurst	7146.0162	7700
55648 7590 06/18/2008 KEVIN L. RUSSELL CHERNOFF, VILHAUER, MCCLUNG & STENZEL LLP 1600 ODS TOWER 601 SW SECOND AVENUE PORTLAND, OR 97204				
EXAMINER RYAN, PATRICK A				
ART UNIT 2623		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/676,986

Applicant(s)

FAIRHURST, JON ARTHUR

Examiner

PATRICK A. RYAN

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is made in response to Reply to Office Action of December 5, 2007, received March 7, 2008. Applicant has amended Claims 1, 2, 3, 4, 5, 8, 10, 12, 13, 14, 15, and 16; and canceled Claims 17 and 18. As amended Claims 1 through 16 are presented for examination.
2. Applicant has amended the Specification to provide an Abstract of 50 words. In view of this amendment, the objection to the Specification has been withdrawn.
3. Applicant has removed the claim term "information functionality" from Claim 3, therefore the objection to the specification for failing to provide proper antecedent basis for claimed subject matter has been withdrawn.
4. Applicant has removed the claim term "said different channels" from Claim 1, therefore the rejection under 35 U.S.C. 112 second paragraph for failing to provide sufficient antecedent basis has been withdrawn.

Response to Arguments

5. Applicant's arguments, see Reply to Office Action Pages 6 and 7, filed March 7, 2008, with respect to the rejection of Claims 1-4, 6, 8, 10, an 12-17 under 35 U.S.C. 112 first paragraph have been fully considered and are persuasive.
6. Applicant provides reference to the Specification as to the intended meaning of claim term "informational material" and provides examples such as, the written description of a program (Specification Page 2 Line 8), financial information, weather information, news information, and sporting information (Specification Page 3 Lines 2-

Art Unit: 2623

4). Applicant has shown enabling aspects of the disclosure with regard to claim term "informational material", therefore the rejection under 35 U.S.C 112 first paragraph has been withdrawn.

7. Applicant's arguments with respect to the rejection of Claims 1-4, 12, and 16 under 35 U.S.C. 102(e) as being anticipated by Thompson et al., United States Patent Application Publication (2003/0018973), have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 3, 4, 12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al., United States Patent Application Publication (2003/0018973 A1), hereinafter "Thompson" in view of Finseth et al., United States Patent (6,754,906 A1), hereinafter "Finseth".

10. In regards to Claim 1, Thompson teaches a method for modifying a set of informational material for presentation on a video presentation device for a user (as shown in Fig. 2 and described in Paragraphs [0024-0028]) comprising presenting programming content to a user in a first display mode of the video presentation device, the first video display mode displaying programming content of a user-selected channel,

to which the display device is tuned (tuner 124 is used to tune to a channel requested by a user, which is displayed by way of video presentation device 104A, as described in Paragraph [0024]; with further reference to Paragraph [0018]);

Thompson teaches displaying informational material, such as channel lists in the form of an EPG (as disclosed in Paragraphs [0055-0058]), but does not teach receiving a first instance of a signal associated with the depression of a button on a remote for controlling the video presentation device, and in response to the receipt of the first instance of the signal, presenting first informational material to the user in a second display mode of the presentation device while the display device is tuned to the user-selected channel, where the first informational material is unrelated to the user-selected channel.

In a similar field of invention, Finseth teaches a method of displaying an electronic program guide (EPG) to a user. The EPG is configurable in a variety of organizational categories such as time, channel, topic, and actor (Finseth Abstract). In addition, Finseth teaches user interactions (by way of Remote Control 86 transmitting an infrared signal) such as displaying the EPG using a "guide" button (as described in Col. 11 Lines 66-67 and Col. 12 Lines 1-25). Figure 4 of Finseth depicts a tree organized EPG with multiple levels of organization that is configurable to a variety of display modes. In particular, Finseth discloses organizing EPG data in a display mode by topical subjects, such as Mysteries and News (as shown in Fig. 4 and described in Col. 13 Lines 30-42; with particular reference to element 92). Furthermore, Finseth teaches that each organizational level is selected by the user and is customizable

based on the user's selection of, for instance, number of levels to display (first, second, third, etc.), as described in Col. 14 Lines 17-32.

Thompson also does not teach receiving a second instance of the signal while the first informational material is displayed to the user, and in response to the receipt of the second instance of the signal, presenting second informational material to the user while the display device is tuned to the user-selected channel, where the second informational material is unrelated to the user-selected channel; and where the first and second informational material, respectively, are sequentially adjacent ones in a list of preferred informational material for the user and maintained on the video presentation device.

Finseth teaches additional user interactions with EPG, such as selecting a particular channel, and requesting additional guide information (as described in Col. 11 Lines 66-67 and Col. 12 Lines 1-25). Finseth also teaches displaying a second informational material, by way of program titles, to the user based on broadcast time and organized adjacently to topical subjects, as shown in Figure 4 and described in Col. 13 Lines 43-62. Furthermore, Finseth teaches that each organizational level is selected by the user and is customizable based on the user's selection of, for instance, number of levels to display (first, second, third, etc.), as described in Col. 14 Lines 17-32. Finseth further teaches organizing the EPG based on user preference by displaying only programming information that fits the user's preferences, as described in Col. 12 Lines 41-52.

It would have been obvious to one of ordinary skill in the art at the time of the invention of combined the method of modifying a set of informational material presented to a user based on the users interactions with content presented in a first display mode, as taught by Thompson, with the method of displaying additional information regarding broadcast content with in an EPG that is configurable in a variety of organizational levels, as taught by Finseth, because these options would provide the user the opportunity to customize the way they navigate informational material within an EPG. This customization would provide the user with a greater amount of control and also allow the user to display and sort program information in an efficient manner, as Finseth described in Col. 2 Lines 9-19.

11. In regards to Claim 2, Thompson and Finseth teach the method of Claim 1 where the second informational material is presented in a third display mode different from each of the first and second display modes (Finseth also teaches displaying the EPG in a display mode that presents program titles to the user based on broadcast time and organized adjacently to topical subjects, as shown in Figure 4 and described in Col. 13 Lines 43-62; with particular reference to elements 94 within time categories 100A and 100B).

12. In regards to Claim 3, Thompson and Finseth teach the method of Claim 1 wherein the second informational material is presented in a third display mode different from each of the first and second display modes (Finseth also teaches displaying the EPG in a display mode that presents program titles to the user based on broadcast time and organized adjacently to topical subjects, as shown in Figure 4 and described in Col.

13 Lines 43-62; with particular reference to elements 94 within time categories 100A and 100B).

13. In regards to Claim 4, Thomson and Finseth teach the method of Claim 3 wherein the video presentation device automatically modifies the sequential order of respective instances of preferred informational material in the list based upon the duration that the user watches respective ones of the instances measured over a temporal time period (Thomson teaches organizing a channel list based on the time a user view each of a given set of channels. Based on the duration a user watches each channel, the list is organized in a sequential order using a First-in-First-out system, such as that of Fig. 3; as described in Paragraphs [0027-0032]).

14. In regards to Claim 12, Thompson and Finseth teach the method of Claim 1 wherein the list includes less than all informational material available to the user through the video presentation device (Thompson teaches segregated channel "(A) list" and "(B) list", as described in Paragraph [0037]).

15. In regards to Claim 16, Thompson and Finseth teach the method of Claim 1 wherein the list is determined in a manner free from explicit user definition (functions performed by processor, which are described in Paragraph [0006] lines 12-17).

16. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Thompson and Finseth as applied to Claim 4 above, and further in view of Lin, United States Patent (6,934,917 B2).

17. In regards to Claim 5, Thompson and Finseth teach a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period as described in Claim 4, but do not teach that the temporal time period is a plurality of days.

In a similar field of invention, Lin teaches a system and method for generating a list of favorite channels automatically. In Lin's method, the time period in which the user's activity can be one or more particular day(s), week(s), or month(s) (as described in Col. 1, Lines 57-64).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Lin's method of monitoring the user for a plurality of days in the method of Thompson and Finseth because a larger sum of data on a user of the system would establish a more accurate preference channel list and, therefore, more accurately represent the true likes/dislikes of the user.

18. Claims 13, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Thompson and Finseth as applied to Claim 4 above, and further in view of Candalore, United States Patent Application Publication (2002/0104081 A1).

19. In regards to Claims 13 and 15, Thompson and Finseth teach a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period as described in Claim 4, but do not teach that the modification can be based on the time of day that the user

selects informational materials or day of the month that the user selects informational materials.

In a similar field of invention, Candelore teaches a method wherein the modification of a favorite channel list is based upon relative statistics, such as the time of day ("Start Time" and "End Time" of Table I, as shown and described in Col. 4 Lines 10-29) or the day of the month ("date" column of Table I, as shown and described in Col. 4 Lines 14-38) the different channels are selected.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Thompson and Finseth with the system of Lin in order have the ability to modify sets of informational materials for the user based upon the time of day or day of month because, as disclosed by Candelore:

"... if one statistical count is limited to a fixed size, e.g., a bite, the statistical count will roll over at a maximum count of "255." Thus, the statistical data may become inaccurate after a certain count" (as described in Paragraphs [0004, 0005]).

The act of deleting content entries based on different time factors (as a function of time intervals), as performed by Candelore, would therefore eliminate the out dated entries of a favorites list, which would more accurately represent the current likes/dislikes of the user.

20. In regards to Claims 14, Thompson and Finseth teach a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period, as described in Claim 4, but does not teach that the modification can be based on the day of the week that the user selects informational materials.

In a similar field of invention, Candelore teaches a method wherein a favorites list is created based on a number of statistical factors, one of which is the day of the week a particular channel is tuned (as described in Paragraph [0055] lines 12-19).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Thompson and Finseth with the system of Candelore in order have the ability to modify sets of informational materials for the user based upon the day of the week because, as disclosed by Candelore:

"... If one statistical count is limited to a fixed size, e.g., a bite, the statistical count will roll over at a maximum count of "255." Thus, the statistical data may become inaccurate after a certain count" (as described in Paragraphs [0004, 0005]).

The act of deleting content entries based on different time factors (as a function of time intervals), as performed by Candelore, would therefore eliminate the out dated entries of a favorites list, which would more accurately represent the current likes/dislikes of the user.

21. Claims 6, 8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Thompson and Finseth as applied to Claim 4 above, and further in view of Finseth et al., United States Patent (6,813,775 B1) hereinafter "Finseth ('775)".

22. In regards to Claim 6, Thompson and Finseth teach a method of modifying the set of informational materials for the user based the duration that the different channels are selected over a temporal time period as described in Claim 4, but does not teach

that video presentation device is free from modifying the sequential order based on any duration less than a threshold.

In a similar field of invention, Finseth ('775) teaches a method of developing a user's selection history by keeping track of the amount of time each television program is watched. Finseth ('775) discloses a technique to filter out history data if the users viewing time is less than a given threshold in order to detect channel surfing (as described in Col. 10 lines 53-63).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Thompson and Finseth with the method of Finseth ('775) in order to filter out informational materials if the users viewing time is less than a given threshold because, this filtering process would eliminate the erroneous data generated as a user skips through the channel content that is undesirable. Finseth ('775)'s less than threshold would account for the content the user skips over during a period of channel surfing and would therefore more accurately develop a preference list of content for the user.

23. In regards to Claim 8 and 10, Thompson and Finseth teach a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period as described in Claim 4, but does not teach that the video presentation device is free from modifying the sequential order based on any duration greater than a threshold.

In a similar field of invention, Finseth ('775) teaches a method of developing a user's selection history by keeping track of the amount of time each television program

is watched. Finseth ('775) discloses a technique to filter out history data if the users viewing time is greater than a given threshold in order to detect, for example, when the user has forgotten to turn off the receiver (as described in Col. 10 lines 53-63).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Thompson and Finseth with the method of Finseth ('775) in order to filter out informational materials if the users viewing time is greater than a given threshold because, this filtering process would eliminate the erroneous data generated when a user leaves the receiver on for an extended period of time without watching the content. Finseth ('775)'s greater than threshold would therefore account for the content the user is not actually watching during this period of inactivity and would therefore more accurately develop a preference list of content for the user.

24. Claims 7, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Thompson, Finseth, and Finseth ('775) as applied to Claims 6 and 8 above, and further in view of Eldering et al., United States Patent (7,240,355 B1) hereinafter "Eldering".

25. In regards to Claim 7, Thompson and Finseth teach a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period as described in Claim 4 and Finseth ('775) teaches a method of modifying based on a temporal time period of less than a threshold as described in Claim 6, but each do not teach the threshold of 3 seconds.

In a similar field of invention, Eldering teaches a subscriber characterization system with filters in which the subscriber's selections are monitored. Eldering discloses a channel surfing detection method, which involves disregarding a channel that is selected for only 3-4 seconds (as described in Col. 2 lines 19-45).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Thompson, Finseth, and Finseth ('775) with the method of Eldering in order to accurately account for a user rapidly skipping undesirable content, by disregarding data characterized by channel surfing, because a more accurate representation of the users likes/dislikes in program content can be created.

26. In regards to Claims 9 and 11, Thompson and Finseth teach a method of modifying the set of informational materials for the user based upon the duration that the different channels are selected over a temporal time period as described in Claim 4 and Finseth ('775) teaches a method of modifying based on a temporal time period of greater than a threshold as described in Claim 8, but each do not teach the threshold of 45 seconds.

In a similar field of invention, Eldering teaches a subscriber characterization system with filters in which the subscriber's selections are monitored. Eldering discloses a method of detecting when a user is idle, which involves disregarding a channel when a lack of channel changes, volume changes, or any other selection changes activity for more than 3 hours ("dead periods" as described in Col. 2 lines 46-57).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combined the method of Thompson, Finseth, and Finseth ('775) with the method of Eldering in order to filter out informational materials if the users viewing time is greater than a given threshold of 3 hours because, this filtering process would eliminate the erroneous data generated when a user leaves the receiver on for an extended period of time without watching the content. A threshold of 3 hours, which is greater than 45 seconds, would therefore account for the content the user is not actually watching during this period of inactivity and would therefore more accurately develop a preference list of content for the user.

Conclusion

27. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
28. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 2623

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PATRICK A. RYAN whose telephone number is (571)270-5086. The examiner can normally be reached on Mon to Thur, 8:00am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

30. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. A. R./
Examiner, Art Unit 2623.
Tuesday, June 17, 2008

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2623